IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE ELEVENTH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE B. SUDERSHAN REDDY

and
THE HON'BLE MR JUSTICE C.V.RAMULU

WRIT PETITION NO : 22308 of 2003

Between:

M/s. Vyshnavi Enterprises Shop No. 50 2nd floor KSR Complex, Tarapet, Vijayawada-520 001
rep by Proprietor Mr. Vijay Kumar Kapoor

..... PETITIONER

AND

1 Commercial Tax Officer, Convent Street, Gunadala Vijayawada
2 Assistant Commissioner Commercial Taxes (Int.) No.1 Division, Vijayawada

..RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ of Mandamus or any other appropriate writ or order or direction declaring the action of 2nd respondent in detaining 300 quintals of gramdhall during the transit from Indore, Damoh (Madhya Pradesh) and Nagapur (Maharastra) to Chennai (tamilnadu) and collecting Rs.1,51,116/- towards the alleged tax and five times penalty though there is no element of sale or purchase in the state of Andhra Pradesh as arbitrary illegal, without jurisdiction and violative of Article 265 of Constitution of India and consequently direct the respondent to refund the penalty amount of Rs.1,25,930/- to the petitioner forthwith with interest @ 12 % from the date of collection till date of refund.

Counsel for the Petitioner: MR.P.GIRISH KUMAR

Counsel for the Respondents: MR.K.RAJI REDDY (SPL.SC FOR COMMERCIAL TAXES)

The Court made the following:

ORDER: (Per BRSR,J)

The petitioner invokes the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India with a prayer to issue a writ of *Mandamus* declaring the action of the second respondent in detaining altogether 300 quintals of gramdhall during transit from Indore, Damoh (Madhya Pradesh) and Nagapur (Maharastra) to Chennai (Tamilnadu) and collecting Rs.1,51,116/- towards the alleged tax and five times penalty as illegal and without jurisdiction.

The main contention urged in the writ petition is that there is no element of sale

or purchase in the State of Andhra Pradesh and therefore, the question of levy of any tax much less any penalty does not arise. The writ petitioner claims to be a canvassing agent in dhal and pulses, engaged in the business of arranging sale/purchase transactions in pulses between registered dealers in various states as well as in Andhra Pradesh on brokerage basis. It is alleged that in the course of its business, the petitioner has arranged for interstate sales of Bengal gram-dhal between the selling dealers in Madhya Pradesh and Maharastra and the purchasing dealers at Tamilnadu as detailed hereunder:

S.No.	Selling Dealer	Quantity	Amount(Rs.)	Purchasing Dealer
1.	SiddheshwarIndustriesIndore, M.P.	100 Qtls	1,92,292	Praveena Traders, Chennai
2.	Agarwal Dhall Mills Damoh, M.P.	100 Qtls	1,90,600	Praveena Traders, Chennai
3.	Ambay Food Industries Nagpur,Maharastra	100 Qtls.	1,79,100	Bhavani Trading Company, Chennai.

The lorries carrying the goods from Madhya Pradesh reached Vijayawada on 23.09.2003 at night, while the other lorry from Nagpur reached Vijayawada on 22.09.2003.

The first respondent herein inspected the business premises of the petitioner herein on 24.09.2003 and seized certain documents relating to the above transactions such as invoice copies, way bills, transit passes, L.R. copies etc. On verification of records, it was found that M/s.Praveena Traders, 95, Muttiappan Street, Madras purchased Gram Dhall from Siddheshwar Industries, Indore and also from Agarwal Dhall Mills, Damoh. Bhavani Trading Company, 4/88 5, MTH Road, Chennai purchased gram dhall from Ambay Food Industries, Nagpur. On enquiries, it is alleged that the petitioner could not assign proper reasons and explain as to (a) the genuineness of the dealers at Chennai
(b) the reasons for Chennai dealers engaging Vijayawada brokers and (c) the reason of transshipment taking place at Vijayawada. It is further alleged that the petitioner failed to produce the information regarding the correct dealers in spite of providing ample opportunity. It is under those circumstances, the

second respondent herein *vide* order, dated 27.09.2003, passed orders detaining the goods in the premises of M/s.Parakh Foods Limited, Sabhapathi Road, Bhavanipuram, D.No.76-7-1A, Vijayawada.

Thereafter, the petitioner was served with a notice, dated 08.10.2003, requiring the petitioner herein to show cause as to why the tax on estimated sale value in addition to penalty equivalent to five times of tax should not be levied and collected. In the show cause notice itself it is alleged that the petitioner was not able to give proper answers as to the details and the genuineness of the dealers at Chennai, for which reason the goods were detained for causing further enquiry in terms of the detention order, dated 27.09.2003. The order proposing to collect the tax together with penalty was passed on 08.10.2003 itself on the ground that the petitioner accepted the offence and offered to pay the tax as well as the penalty.

In this writ petition, learned counsel for the petitioner Sri P.Girish Kumar, contends that the very fact that the notice was issued on 08.10.2003 requiring the petitioner to submit an explanation on the same day, followed by the impugned order, dated 08.10.2003, and dated 10.10.2003 requiring the petitioner to pay the tax as well as five times penalty reveal that whole of the proceedings were engineered against the petitioner without any application of mind and therefore, suffer from incurable legal infirmities.

Learned Standing counsel and learned Special Standing Counsel for the Department invited our attention to the averments made in the counter affidavit and *inter alia* contended that the transactions in question were not at all genuine. The petitioner failed to give proper answers as to the genuineness of the dealers at Chennai and it was under those circumstances, the goods were detained, followed by the impugned order, which according to the learned Standing Counsel, do not suffer from any legal infirmities requiring this Court's interference in exercise of its jurisdiction under Article 226 of the Constitution of India.

The order, dated 8.10.2003, in our considered opinion, cannot be characterized as an order of assessment requiring the petitioner to pay the tax and five times penalty over and above the tax. The reasons assigned are totally vague and indefinite in their nature. The whole of the order of assessment is based on the alleged admission of the petitioner. The petitioner/dealer is stated to have "*accepted the offence and offered to pay the amounts towards the tax and penalty*". It is difficult to countenance as to how the respondents could have insisted the petitioner to submit explanation within 24 hours and passed the impugned orders on the basis of the alleged admission. The proceedings do not inspire any confidence and it is not proper for us at this stage to express any further opinion on the question of liability and the petitioner to pay any tax and penalty.

In our considered opinion, it would be just and equitable to set aside the impugned orders passed by the respondents and remit the matter for fresh consideration in accordance with law. The petitioner shall submit its explanation to the respondents within two weeks from today, which shall be received by the respondents for their consideration. There shall be an enquiry with reference to the explanation to be submitted by the petitioner, in which the petitioner shall be permitted to appear either in person or by duly instructed counsel. That all the objections, to be raised, shall be taken into consideration and an appropriate reasoned order shall be passed by the respondents, which shall be communicated to the petitioner in accordance with law. That an appropriate decision in the matter shall be taken within two months from the date of petitioner's submitting its explanation.

We, however, make it clear that refund of the amounts, if any, to the petitioner shall depend upon the orders to be passed by the respondents. In the circumstances, we are not inclined to direct refund of the amount since the matter is now required to be disposed of on merits pursuant to this order of ours. There shall be an order accordingly.

The Writ Petition is accordingly allowed to the extent indicated above without any order as to costs.

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B. SUDERSHAN REDDY, J.

Date: 11.04.2005.

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C.V. RAMULU, J.

That Rule Nisi has been made absolute as above. Witness the Hon'ble Sri Justice Bilal Nazki, the Acting Chief Justice on this Monday, the Eleventh day of April, Two Thousand and Five.

Note: Furnish C.C. of order within three days.

(B/o)

GS/TS

To

1 The Commercial Tax Officer, Convert Street, Gunadala Vijayawada

2 The Assistant Commissioner Commercial Taxes (Int.) No.1 Division, Vijayawada

3 Two C.D. Copies.